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Resolution adopted by the General Assembly

(without reference to a Main Committee (A/61/L.67 and Add.I))

61/295. United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,



Recalling the recommendation of the Human Rights Council contained in its resolution 4/18 of 29 June 2006,¹ by which the Council adopted the text of the Declaration on the Rights of Indigenous Peoples, and the decision of the Human Rights Council in its resolution 61/178 of 20 December 2006, by which it decided to take immediate and effective steps and action on the Declaration to allow time for further consideration and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly, and noting the adoption of the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution,

107th plenary meeting
13 September 2007

As good as it gets:

UN Declaration on the rights of indigenous peoples

United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Recognizing that indigenous peoples are equal to all other peoples, while acknowledging their diversity and the richness of their cultures, languages and identities, and to be respected as such,

Recognizing also that all peoples contribute to the diversity and richness of our world, and that such diversity constitutes the common heritage of humankind,

**Permanent Forum:
Unprofessional and gets personal**

¹ See Official Records of the General Assembly, Fifty-first Session, Supplement No. 11 (A/61/55), part one, chap. II, sect. A.



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EDITORIAL

As good as it gets UN Declaration on the Rights of Indigenous People“S”

On 13 September 2007, the United Nations General Assembly adopted the Declaration on the Rights of Indigenous Peoples after 22 years of negotiations. From the denial of entry to the League of Nations to the adoption of a declaration, it has been a long and arduous journey for indigenous peoples, whose civilisational values are increasingly being recognized as global warming threatens the very existence of the world.

The African bloc at the United Nations gave more than a few hiccups since it successfully moved a procedural motion at the General Assembly session in December 2006 to not to consider the Declaration approved by the Human Rights Council in June 2006. New amendments on territorial integrity were inserted to satisfy the African bloc. On the D-Day i.e. 13 September 2007, Australia, Canada, New Zealand and the United States which voted against the Declaration stood exposed.

The UN Declaration on the Rights of Indigenous Peoples is really as good as it gets. Asian Indigenous and Tribal Peoples Network in its June-December 2006 issue of *Indigenous Rights Quarterly* explained the new elements in international human rights law enunciated in the Declaration: the rights of indigenous peoples, as a collective and as individuals (Article 1), affirmation of equality while exercising the right of self-determination (Article 3), the rights of indigenous peoples and individuals not to be subjected to forced assimilation or destruction of their culture (Article 8), the right to free, prior and informed consent (Article 10), recognition of the right to traditional medicines and the right to maintain their health practices (Article 24), land rights (Article 25), the right to the lands, territories and resources of indigenous peoples (Article 26), customary laws of indigenous peoples (Article 34) and the right to the recognition, observance and enforcement of Treaties, Agreements and Other Constructive Arrangements concluded with States or their successors and to have States honour and respect such Treaties, Agreements and other Constructive Arrangements (Article 37). These elements remained intact in the final text as adopted in September 2007.

For a few radical indigenous activists, the right of self-determination has been diluted. Article 46(1) inserted at the request of the African bloc, among others, states

that "Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States".

The radicals are a few. While most indigenous peoples do not advocate the right of self-determination as the right to secession, no Declaration has been adopted or can be adopted by the UN which is "contrary to the Charter of the United Nations". Yet, the most crucial aspect of the Declaration has been the use of the term "peoples" with "s". The use of the term "peoples" was one of the most controversial issues at the Vienna World Conference on Human Rights in 1993. In fact, the resolutions of the Human Rights Council still use the terms "people", and "populations". The Declaration on the Rights of Indigenous Peoples as adopted by the United Nations should put to rest any controversy about the use of the term "peoples". No member State either dismembered or impaired as a direct consequence of the adoption of legally binding International Covenant on Civil and Political Rights. Nor shall any member State will be dismembered or impaired because of the adoption of morally binding Declaration on the Rights of Indigenous Peoples. Both recognise the right of self-determination.

A few of the radicals actually gave insinuation that even if the Draft Declaration is not adopted by the UN, it will become a customary international law for its consistent reference just like the international humanitarian laws and therefore, no need for its adoption by the UN. It was a flawed interpretation of customary international law. Those who voted against the Declaration claimed that they voted against the Declaration to reject "any possibility that this document is or can become customary international law". They can enjoy life in a fool's paradise.

While all UN Declarations as part of soft laws are legally non-binding, the Declaration on the Rights of Indigenous Peoples will play a crucial role to shape policies and programmes of the multilateral agencies. For decades, the General Comment of the Human Rights Committee No. 23 on Article 27 of the International

Thailand: New constitution and indigenous peoples

Following the overthrow of the Thaksin Shinawatra government in a bloodless military coup on 19 September 2006, the 1997 Constitution was abolished by the military government and Martial Law was imposed in Thailand. The military led government also started drafting a new Constitution. On 19 August 2007, the new Constitution was adopted through a referendum in which more than 42 percent voted against the new Constitution.

There are some improvements in the 2007 Constitution in comparison to the 1997 Constitution. For example, Article 4 of 2007 Constitution guarantees protection of “human dignity, rights, liberty, and equality of the people” in accordance with the Constitution of Thailand and “international obligations, which Thailand has endorsed”. The 1997 Constitution did not recognize Thailand’s international obligations.

Under Article 79(6) and Article 65 of the new Constitution, the rights of the “traditional communities” have also been recognised. But, the new Constitution has once again failed to address the age-old problems of the indigenous peoples.

I. Non-recognition of the term “indigenous peoples”

According to 2002 survey, there are over 9,00,000 hill tribes mainly belonging to the Hmong, Karen, Lisu, Mien, Akha, Lahu, Lua, Thin, and Khamu living in 20 provinces in the Northern and Western Thailand. In addition, there are indigenous fisher communities (the Chao-lae) and a small population of hunter-gatherers in Southern Thailand who are considered as indigenous.

The 2007 Constitution in more

ways than one is a mere reminiscent of the previous Constitution. It has again failed to recognize the term “indigenous peoples” and merely uses the term “traditional communities”.

II. Absolute silence on citizenship rights

The most serious problem or the root cause of all the problems of the indigenous peoples of Thailand is the the denial of citizenship right. There are an estimated 480,000 stateless indigenous persons in the country of which 120,000 have been granted permanent resident status by December 2006. Due to the lack of citizenship rights, these indigenous peoples have been considered as “illegal aliens” and subjected to arbitrary arrest, discrimination, denial of basic political rights such as the right to vote and participate in the administration, the right to land ownership, the right to freedom of movement, the right to education and the right to access welfare services such as health services, jobs, etc.

The 2007 Constitution of Thailand is absolutely silent on citizenship rights. There is no clause relating to “citizenship”. The problems of citizenship of the indigenous peoples have therefore not been addressed.

Article 6 of the 2007 Constitution provides - “The Constitution is the supreme law of the state. The provisions of any law, rule or regulations, which are contradictory to or inconsistent with this Constitution, shall not be enforced”. Section 7 of the Citizenship Act of Thailand of 1965, as amended in 1992, provides that “people born in the Kingdom of Thailand of parents who are aliens in the Kingdom will not receive citizenship and are living in the Kingdom without the legal authority to do so”.

There is no doubt that Section 7 of the Citizenship Act is discriminatory. However, since there is no clause relating to “citizenship” in the 2007 Constitution, the discriminatory Citizenship Act of Thailand of 1965 is unlikely to be considered as “contradictory to or inconsistent with” the 2007 Constitution. Therefore, the Citizenship Act of Thailand of 1965 will prevail and indigenous peoples will continue to be denied citizenship.

On 18 January 2005, a Cabinet Resolution was adopted to speed up the processing of the citizenship applications of the hill tribes. The process has been absolutely tardy, marked by corruption. The military coup of September 2006 and its subsequent political instability made things more difficult for the indigenous peoples.

The indigenous peoples will have to live as “illegal aliens” in their own country due to the discriminatory policies of the government and the failure of the 2007 Constitution.

III. No redress on restrictions on the freedom of movement

The 2007 Constitution of Thailand allows the restrictions on the freedom of movement. Article 34 provides that “A person shall enjoy the liberty of traveling and the liberty of making the choice of his or her residence within the Kingdom” but the government can impose restrictions “by virtue of the law specifically enacted for maintaining the security of the state, public order, public welfare, town and country planning, or welfare of the youth.” Phrases like “security of the state, public order, public welfare, town and country planning, or welfare of the youth” have been consistently used in the past to deny freedom of movement to the indigenous peoples.

Indigenous peoples face unique restrictions on the freedom of movement because of the lack of citizenship. They are required to take prior permis-

sion from the concerned authorities if they wanted to go to another province. They are issued different colours of identity cards - blue, green with red border, pink etc. Each colour indicates the kind of permission the indigenous peoples have to take from District Chief to Provincial Governor to travel out of the sub-district or province. They face penalty and imprisonment for the failure to take permission. While some of these restrictions have been relaxed in practice, the authorities can invoke the draconian provisions according to their wishes.

The 2007 Constitution has failed to address such institutionalised discrimination against the indigenous peoples with regard to freedom of movement. Rather, the Constitution has sanctified the discriminatory law being in force in the name of "national security" etc.

IV. Lack of specific protection to indigenous peoples' land rights

The 2007 Constitution does not provide any specific mechanism for the protection of the land rights of the indigenous peoples. Article 33 provides for "liberty of dwelling" while Articles 41 and 42 protect the property rights of the citizens. At the same time, Article 42 also states that "The expropriation of immovable property shall not be made except by virtue of the law specifically enacted for the purpose of public utilities, necessary national defense, exploitation of national resources, town and country planning, promotion and preservation of quality of the environment, agricultural or industrial development, land reforms, or other public interests, and fair compensation shall be paid in due time to the owner thereof as well as to all persons having the rights thereof, who suffer loss by such expropriation, as provided by law." It is therefore clear that indigenous peoples can be

evicted in the name of "public interests", "industrial development" etc.

Article 56 seeks to ensure the citizens' participation by ensuring the right to "receive information, reasons, and explanation from a state agency, state enterprise or local government organization before permission is given for implementation of any project or activity which may affect the quality of environment, health, and sanitary conditions, quality of life or

While Article 79(6) and Article 65 of the new Constitution of Thailand recognised the rights of the "traditional communities" but their age-old problems such as the denial of the citizenship rights, restrictions on the freedom of movement, land rights etc have not been addressed. Unless the new constitution addresses these problems, indigenous peoples will continue to suffer from gross human rights violations in contradiction of the international obligations which Thailand has endorsed.

other material of interest to him or her or a local community and shall have the right to express his or her opinion on such matters to agencies concerned for consideration". Article 56 further provides that "The state shall hold a referendum to gather people's views and opinion before undertaking any social, economic, political, and cultural development planning, appropriation of immovable property, city planning, land use zoning, and issuance of regulations which may affect the interests of the people."

The positive provisions under Article 56 are also complimented by Article 66 which provides that the

State shall protect "the right of a person to give to the State and communities participation in the preservation and exploitation of natural resources and biological diversity and in the protection, promotion and preservation of the quality of environment".

Article 66 further prohibits implementation of "any project or activity which may seriously affect the quality of environment" and proper studies must be done in order to evaluate the impact of the project or activity on the quality of environment prior to its operationalisation. A community shall have the right to "sue a state agency, state enterprise, local government organization or other state authority" if they violate the provisions of this Article but nowhere it has been specifically guaranteed that the views of the affected persons will be binding on the State or implementing agencies.

Further, Article 84 allows the participation of the affected people in the "decision making process" in preservation, maintenance, and exploitation of natural resources and biological diversity by the state.

These are all general provisions meant for all citizens. The Constitution lays down no specific safeguards for the protection of the land and other property rights of the indigenous peoples who are the disproportionate victims of land alienation and forcible evictions.

Presently, an estimated 80,000 indigenous peoples including from Karen, Shan, Yintalai and Karenni communities have been facing impending displacement due to the proposed construction of a dam over the Salween river in Mae Hong Son province of Thailand, bordering Burma. The affected indigenous communities have not been allowed participation in the dam project nor has their "free and prior consent" been sought by the authorities.

V. No specific safeguards of cultural rights

Article 65 of the 2007 Constitution states that a “traditional community” shall have the right “to conserve or restore their customs, local knowledge, arts or good culture of their community and of the nation and participate in management, maintenance, preservation and exploitation of natural resources and environment in a balanced and sustainable manner and persistently.” These guarantees were also provided under Article 46 of the 1997 Constitution. Nonetheless Article 79(6) of the new Constitution which enstrusts the responsibility to the State to “preserve, revive, and protect arts, culture, and national traditions, good values, and folk wisdom and promote awareness thereof” appears to be an improvement of Article 289 of the 1997 Constitution which entrusted the responsibility to local government.

VI. Lack of affirmative action programmes for indigenous peoples

Affirmative action or positive discrimination is a major tool for protection of the rights of the disadvantaged groups including the indigenous peoples and for their development in all sectors. Many democratic countries have adopted similar programmes.

Article 30 of the 2007 Constitution provides for equality of all and prohibits “unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education, or constitutional political views”. It also encourages the State to adopt measures to “eliminate obstacles to or promote persons’ ability to exercise their rights and liberties like other persons” which “shall not be deemed as unjust discrimination”. While this is a general provision applicable to all the

citizens irrespective of their socio-economic conditions, the Constitution failed to provide any specific affirmative action programme for the “traditional communities”. Nonetheless, Article 30 of the new Constitution provides the scope to the Thai government to undertake affirmative action programmes in the areas such as education, health care, employment and promotion if it wants to bring the traditional communities at par with the mainstream Thais.

VII. Supremacy of international law not upheld

In January 2003, Thailand ratified the International Convention on

Thailand has expressed reservations to many international human rights instruments especially with regard to the question of right to nationality. The Constitution fails to uphold supremacy of international human rights law.

the Elimination of All Forms of Racial Discrimination (ICERD). However, the government of Thailand gave the general interpretative declaration that “The Kingdom of Thailand does not interpret and apply the provisions of this Convention as imposing upon the Kingdom of Thailand any obligation beyond the confines of the Constitution and the laws of the Kingdom of Thailand. In addition, such interpretation and application shall be limited to or consistent with the obligations under other international human rights instruments to which the Kingdom of Thailand is party.” It has also put reservations to Article 4 and Article 22 of the Convention.

From the “general interpretative declaration” to the ICERD by Thailand, Thailand made international

human rights law subservient to its national law.

As stated above, discrimination against the indigenous peoples is systemic and rampant in Thailand. The Constitution of 2007 does not make any tangible effort to root out the systemic discrimination against the indigenous peoples.

As a party to the ICERD, Thailand has the obligations to maintain the principles of equality and non-discrimination of its citizens on any ground. But the indigenous peoples have been living without or with little rights and face systematic discrimination from the State. The naturalized citizens, mainly belonging to indigenous hill tribes and migrants, are not treated as equal before the law. Under Section 19 of the Thailand’s Citizenship Act of 1965, the Interior Minister is empowered to revoke Thai nationality of a person who acquires Thai nationality by naturalization for “any act” “amounting to an insult to the nation and “contrary to public order or good morals”. Then Prime Minister Thaksin Shinawatra reportedly suggested before a cabinet meeting in September 2003 that any member of a hill tribe who had been given Thai citizenship and later found involved in illicit drug trading would have his entire family stripped of citizenship.

The vulnerability of indigenous peoples from the whims and fancies of executive caprice has not been addressed in the 2007 Constitution. ■

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Hmong refugees: Refoulement decided

On 20 September 2007, the military government of Thailand signed an agreement with the Laotian authorities to deport over 7,700 ethnic Hmong refugees from Ban Huay Nam Khao refugee camp in Phetchabun province of Thailand to Laos before the end of 2008. Thai Prime Minister Surayud Chulanont stated on 6 August 2007 that the Hmong refugees entered Thailand "illegally" and failure to send them back to Laos would create a "never-ending problem" for Thailand.

The Hmongs had fought alongside the United States against the Lao government during the Vietnam War until the United States was defeated in 1975. More than 3,00,000 Laotians, mostly Hmongs, had fled to Thailand to escape persecution by the communist regime. Most of these refugees were either repatriated to Laos or resettled in other countries, mainly in the United States. In 2005, the United States took 15,000 Hmong refugees from Thailand but refused to accept any more refugees.

I. Lack of independent monitoring mission

A total of 7,785 Hmong refugees have been living at the Ban Huay Nam Khao refugee camp since late 2004. Of them, about 2,000 are inmates of the now-closed Wat Tham Krabok camp in Saraburi, Thailand. On 24 June 2007, the army relocated 7,653 Lao-born Hmong refugees from Ban Huay Nam Khao camp to a new camp at Tambon Kheg-Noi, four kilometres away. The journalists have no access to this camp.

On 21 September 2007, Lt. Gen. Nipat Thonglek, director of Thailand's Supreme Command Office's

Department of Border Affairs and also co-chairman of the Sub-General Border Committee stated that the screening process of the 7,785 Hmong refugees would be completed by the end of 2007. The screening will determine who shall be repatriated to Laos. However, as the Thai government treats all the Hmong refugees as "illegal immigrants", almost all of them would be forcibly deported to Laos unless there is intervention from other countries.

According to the 20th September 2007 agreement, the refugees would be sent to their homes or to a designated site in Kasi district in Laos, 200 kilometers north of capital Vientiane. Both the Thai and Laotian governments have agreed to sponsor the project to repatriate the Hmong refugees.

There is no mechanism to verify the status of the Hmong refugees to be repatriated from Thailand to Laos before the end of December 2008. Without verification mechanisms, the returnee refugees will face persecution.

There is no independent monitoring mission to monitor screening of the refugees and their repatriation to Laos. Both Thai and Laotian authorities have been maintaining that the Hmong problem was a bilateral issue between Thailand and Laos and rejected monitoring by any independent observer. The United Nations High Commissioner for Refugees (UNHCR) repeatedly requested to be part of the screening process to verify if the Hmong

refugees' fears of persecution are genuine. So far, UNHCR has not been granted access to the refugees.

The absence of involvement of the UN agencies or international human rights organisations in the repatriation process makes the entire process illegitimate. There are greater risks that the refugees will suffer prosecution at the hands of the Laotian authorities once refouled.

II. Forcible refoulement continues

Although Thailand is not a signatory to the 1951 UN Convention Relating to the Status of Refugees, the Thai government has obligations under international law to protect the fundamental rights of the refugees. But Thailand has never treated the Hmong refugees sympathetically and always branded them as "illegal immigrants". Many asylum seekers have been illegally detained. On 20 August 2007, UNHCR called for the release of the 149 Hmong refugees including 90 children stating that they have been illegally detained in "truly inhumane conditions" in two small and dark cells at the Nong Khai Immigration Detention Centre run by the Thai Immigration Ministry since December 2006.

On 26 January 2007, 16 Hmongs were deported to Laos. On 30 January 2007, Thailand halted forcible repatriation of another 153 Hmong refugees after the United States and other Western countries assured to take them.

On 18 May 2007, Thailand and Laos signed the Lao-Thai Committee on Border Security agreement which provided that Thailand will deport any Lao Hmong asylum seeker upon arrival. On the basis of the agreement,

Thailand deported 31 Hmong refugees to Laos on 25 May 2007, and 163 more on 9 June 2007. Neither the UNHCR nor any international human rights organization has been given access to these refoiled refugees. Hence, their whereabouts and conditions after refoiling are not known.

Many Hmong refugees have also reportedly been evicted from their camps as part of the forcible repatriation. They have been left stranded near the Thailand-Laos border in northern Thailand without food and shelter. As the Thai authorities have imposed a penalty of up to five years in prison and a 50,000 baht (US\$1,200) fine if any one provided shelter to the "illegal immigrants", the Thai landlords have also expelled some 6,500 of the Hmong people who had taken shelter in bamboo huts at Huay Nam Khao village. In addition, the government blamed the Hmongs of creating law and order problems for their alleged involvement in illicit drug trafficking, and launching attacks against Laos from the Thai soil. These tactics have been used to expel the Hmongs.

III. A new smokescreen for refoiling

The Thai military has secretly completed relocation of 7,653 Lao-born Hmong refugees from Ban Huay Nam Khao camp to a new camp at Tambon Kheg-Noi, four kilometres away on 24 June 2007. Of the 7,653 Lao-born Hmongs relocated, 40 per cent are children. The conditions of the refugees in the new settlement are

not known as the army has barred the media from the new relocation site.

The journalists have been issued "guidelines" by the army which forced them to portray the Thai officials favourably, to "refrain from reporting officials' bad treatment, if any, of the

The least Thai and Laotian governments can do is to allow a team of National Human Rights Commission of Thailand, Thai civil society groups and the Hmong refugees to oversee rehabilitation of the first batch of returnees and further repatriation should take place only after satisfactory rehabilitation of the earlier returnees.

Hmong", to discourage further influx of Hmong refugees, to report about the negative consequences of the influx of refugees on the local population and prohibited the media from highlighting the legal status of the Hmong refugees under the local or international law,

among others.

Many Hmong leaders have been summoned by the military officers for questioning after they gave interviews to local and international media against the government's plan of forcible refoiling in order to intimidate them.

The agreement signed on 20 September 2007 by Thailand and Laos is nothing but a smokescreen to deport over 7,700 ethnic Hmong refugees from Ban Huay Nam. International community must intervene with the royal government of Thailand not to forcibly repatriate the Hmong refugees, to allow the UNHCR to monitor the screening process and provide them protection as refugees in Thailand and withdraw the so-called media guidelines and provide unrestricted access to the journalists including foreign journalists and credible humanitarian organizations to the refugee camps. ■

Courtesy: Asian Centre for Human Rights, New Delhi

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Covenant on Civil and Political Rights, General Comment No. XXIII of the UN CERD Committee on Rights of Indigenous Peoples and the ILO Convention No 169 concerning Indigenous and Tribal Peoples in Independent Countries were the only instruments, in addition to a few landmark opinions of the Human Rights Committee in the cases of *Lovelace Vs Canada*, *Ivan Kitok Vs Sweden* etc.

Nonetheless, a number of policy documents including the World Bank's *Policy on Indigenous Peoples*, International Finance Corporation's *Performance Standard 1 on Social and Environmental Assessment*, *Performance Standard 5 on Land Acquisition*, *Performance Standard 7: Indigenous Peoples*, Asian Development Bank's *Policy on Indigenous Peoples*, Inter-American Development Bank's *Operational Policy 765 on Indigenous Peoples* and "UNDP and Indigenous Peoples: A Policy of Engagement" seldom referred to the General Comments of the Treaty Bodies and the ILO Convention No. 169. Even the United Nations Permanent Forum on Indigenous Issues and the UN Special Rapporteur on the situation of human rights and fundamental freedom of indigenous people have been working without a commonly referable and universally acceptable text on the rights of indigenous peoples.

The adoption of the Declaration on the Rights of Indigenous Peoples fills up the legal vacuum, and future policy documents or guidelines must be developed based on the legal framework provided by the UN Declaration on the Rights of Indigenous Peoples. Time has also come for the multi-lateral agencies to revise the existing policies/guidelines on indigenous peoples to bring conformity with the UN Declaration on the Rights of Indigenous Peoples. ■

Burma: Displacement and exodus

The case for international intervention

As Burma brutally suppressed the peaceful protests led by none other than the Buddhist monks, the United Nations Security Council sought to get its act together. However, China opposed any sanction citing it as an internal matter of Burma. On 1 October 2007, the Chief of Army Staff of the largest democratic country in the world, India, General Deepak Kapur made the most serious foreign policy statement on the issue: “the crackdown is an internal matter” of Burma.

In this article, Asian Indigenous and Tribal Peoples Network (AITPN) examines how displacement from Burma has already made a case for intervention by the international community.

I. Scale of internal displacement

The Burmese military junta has already displaced hundreds of thousands of its citizens. While many fled the country, majority remain displaced within the country. The number of internally displaced persons (IDPs) continues to grow at an alarming rate. Military operations, development projects and economic hardships have contributed to a frightening situation of humanitarian catastrophe. Today, Burma has the worst forced displacement crisis in Asia.

According to a recent report by Thailand Burma Border Consortium (TBBC), an estimated 500,000 persons have been internally displaced in eastern Burma. These IDPs have been forced to leave their homes due to variety of reasons but have not been allowed to return to their native places till date. Of these, nearly 295,000 are currently living in temporary settlements in the ceasefire areas administered by ethnic nationalities, about

99,000 persons are believed to be hiding due to fear from the military government (known as the State Peace and Development Council, SPDC), and approximately 109,000 persons have followed SPDC's eviction orders and moved into designated relocation sites. However, these estimates are considered to be conservative. Most parts of eastern Burma remain inaccessible to international observers and there were risks involved in collecting information from conflict-affected areas.

Militarization and human rights violations by the army contributed to the increased number of the IDPs. The recent survey by the TBBC further identified 273 infantry and light infantry battalions to be active in eastern Burma, representing more than 30 percent of Burmese Army's battalions nationwide. In Karen state's Papun district alone, human rights groups reported the establishment of 33 new military camps since late March 2006.

Burmese military tactics include forcing ethnic minorities to abandon their homes, and the use of scattered mortar fire to intimidate those who try to grow rice or other crops. According to the TBBC, more than 3000 villages were destroyed, forcibly relocated or otherwise abandoned in eastern Burma between 1996 and 2006. At least 167 entire villages had been displaced during the past year alone. These field reports have recently been corroborated by high-resolution satellite images taken before and after the villages were displaced.

a. Deplorable conditions of the displaced persons

The conditions of the displaced persons have been deplorable. The agony of internal displacement is

aggravated by the healthcare crisis in eastern Burma. Recent surveys show that health indicators among the displaced population are some of the worst in the world, with 12 percent of the population suffering at any time from the most serious form of malaria, widespread malnutrition, high risk of injury from landmines and armed conflict, and high rates of infant mortality. These highly vulnerable populations receive little international assistance. There has also been consistent food insecurity. The military had planted a large number of landmines in and around the villages, and the people cannot travel beyond a certain area to collect food. They also cannot have access to their crops. In some parts of Karen State the army had allegedly set rice fields on fire.

Due to the severe restrictions on the humanitarian agencies, it has become extremely difficult for them to operate in Burma. In March 2006, the *Medicins Sans Frontieres* closed its programmes in Mon and Karen States due to “unacceptable conditions imposed by the authorities on how to provide relief”. The Global Fund also stopped funding programmes on HIV/AIDS, tuberculosis and malaria in 2005, stating that pressure from the military made it difficult to work with local health authorities, and that travel restrictions restricted access to people in need.

b. Human rights violations

The military government of Burma is infamous for human rights violations. The ethnic minorities have been the primary targets.

The soldiers have been responsible for gross human rights violations including raping women and girls, stealing food, destroying homes and other properties, using slave labour

and participating in the drugs trade. The TBBC revealed that at least 38 villagers were killed by the Burmese Army in 2007 in Thandaung Township alone. According to the Free Burma Rangers, a relief organisation working in the conflict areas of eastern Burma, the Burmese Army's offensive in Karen State has continued throughout May and June 2007. On 2 June 2007, six villagers were killed by the army in Mon Township of Nyaungelbin district. Three weeks later, the village headman of P'Na Ner village was reportedly captured and killed by the army personnel. On 23 June 2007, the army personnel reportedly murdered an entire family of 5 persons including two children identified as Kyaw Eh Wah (4) and Saw Pa Heh Soe (13) in Htee K'bler village.

c. Sexual violence

The Burmese army also used rape as a weapon of its ongoing war against several ethnic minority groups. A new report titled *Unsafe State: State-sanctioned sexual violence against Chin women in Burma*, released by the Women's League of Chinland in March 2007 documented 38 cases of sexual violence committed with impunity by the Burmese Army throughout Chin State in western Burma near the India border. Almost half the cases documented were gang rapes, and at least a third was committed by officers. Sexual violence is typically accompanied by extreme brutality, including severe torture and murder. The report further revealed that one woman was stripped naked and tied to a cross in "a savage act of mockery against her Christian beliefs". According to Amnesty International, girls as young as five years old have been made to perform forced labour duties, and women have been forced to serve and otherwise entertain troops against their will.

According to the Free Burma

Rangers, two young women, aged 18 and 22, from Takehder village in Luthaw Township of Papun district in Karen state, were captured while they were gathering vegetables in the jungle. The victims were raped, their breasts and ears were cut and then killed by Burmese soldiers. The exact date of the attack is not known.

d. Child soldiers and forced labour

According to human rights activists, hundreds of thousands of villagers in conflict-ridden areas were allegedly forced to become "porters" of the military during anti-insurgency operations, build army bases and raise money for military and infrastructure projects. Burma's military regime has also reportedly recruited about 70,000 child soldiers.

The International Labour Organisation (ILO) has been highly critical of Burma's labour practices. There appears to be a direct correlation between forced labour and military activities in ethnic areas. Ethnic minority civilians were forced to work on a variety of infrastructure projects, including roads, bridges, and railways. Those who refuse to work for the military were allegedly threatened.

II. Dimensions of ethnicity

Ethnic groups comprise one-third of Burma's 52 million people. Burma has one of the most ethnically diverse populations in South East Asia. There were more than 100 different ethnic groups and sub-groups. Some of the major groups included Karen, Karenni, Mon, Shan, Chin, Wa, Arakan, Rohingya, Kachin, etc. Each ethnic group is different from the other. The only thing which is common is that they have all been oppressed by the military junta in Burma.

The pattern of the Burmese military has been to eliminate all opposition and take full control of ethnic

areas. As part of its strategy to curb the support of ethnic armed opposition groups (AOGs), it targets civilians on the charges of being supporters of the AOGs. The largest concentration of displaced people is found among the Karen, Karenni, Shan and Mon ethnic groups in eastern Burma.

According to the International Institute for Strategic Studies (IISS), Burma has some 350,000 army personnel, and there are nearly 110,000 paramilitaries. The junta's military expenditures reportedly account for over 40 percent of national budget while its health and education spending are only 0.4 percent and 0.5 percent respectively. The military has been used to crush ethnic minority-led armed conflicts in the country. The ethnic-populated states have been highly militarized. As the military takes control of new territory in ethnic areas, it initiates development projects and exploits natural resources, which displace more civilians. The military government under its programme for ethnic cleansing and controlling indigenous minorities has forced millions to abandon their homes. The SPDC's forcible relocation of minority ethnic groups was not just concentrated in areas of active ethnic armed conflict but also in areas targeted for infrastructure development.

The government had agreed cease-fires with 17 ethnic armed groups although several have broken down as the government intensifies its pressure on minorities. The Karen National Union has never signed a ceasefire and is the largest of the AOGs, and has been battling with the military government for 50 years in one of the world's longest-running insurgencies.

According to a report by Christian Solidarity Worldwide (CSW), violations against Christians in Burma are widespread and systematic. The Christians who are predominantly found among the non-Burmese

ethnic groups such as Chin, Kachin, Nagas and Karen suffer from a deliberate campaign of discrimination in jobs and promotions, restrictions on church events, meetings and literature, and the arrest, torture and imprisonment of pastors and church workers. The most affected group is the Karen, a mainly Christian people who make up just over 10 percent of Burma's population. The Karen bear the brunt of the army's "Four Cuts" counter-insurgency strategy, in which it tries to defeat armed ethnic groups by denying them access to food, funds, recruits and information from other armed opposition groups. In the west, the Muslim Rohingya people and other minority groups along the borders with Bangladesh and India suffer discrimination and forced relocation. Hundreds of thousands of Rohingyas were displaced in schemes to resettle the urban poor and build large-scale infrastructure projects.

III. Influx of refugees into neighbouring countries

Burma's refugee crisis has a regional impact. More than a million of Burmese citizens have fled to neighbouring countries such as Bangladesh, India, Malaysia and in particular Thailand. They face a host of hardships as asylum seekers or illegal immigrants, facing social and economic discrimination as well as living in fear of arrest and deportation.

In recent years, the flow of people out of Burma has become one of South East Asia's largest migration movements. According to estimates, about 2 million people had gone to Thailand, more than 200,000 Rohingyas were living in Bangladesh while thousands were believed to have gone to Malaysia. Others had gone north to India and China. However, exact figures are hard to obtain. Some of these refugees have

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No refuge for the Montagnards

As a result of increasing bonhomie between Washington and Hanoi, the United States' Assistant Secretary of State Ellen Sauerbrey told the newperson in Pnom Penh, Cambodia in February 2007 that the Montagnards no longer suffered significant persecution in Vietnam. There were no complaints of religious persecution and that the Vietnamese authorities were now taking a more relaxed approach towards local churches. Therefore, the current motivation for Montagnards crossing into Cambodia was largely economic as she had been able to meet freely with the Montagnards in the Central Highlands. Finally, the communist regime of Vietnam appeared to have been able to convince the United States that its citizens enjoy the right to freedom of expression in front of the US officials!

In the light of this changed situation, the fate of the 23 Montagnard refugees who were transported to the Phnom Penh in late September 2007 and put under the care of the UN High Commissioner for Refugees (UNHCR) hangs in balance. The refugees ostensibly fled following a series of military operations in the Central Highlands from late July to September 2007. The government of Cambodia agreed to allow the UNHCR to assess the claims of the Montagnard asylum seekers.

Are there any taker for these asylum seekers?

I. Political refugees

With the collapse of the Berlin Wall and the release of Nelson Mandela, "political prisoners" have virtually become an "extinct community". There are about 350 Degar-Montagnard prisoners whom Vietnamese authorities consider as

criminals. In effect, they have been arrested because of their religious belief and ethnicity. Many have been arrested for their attempt to allegedly overthrow the Vietnamese government. On 30 September 2007, two Vietnamese police personnel named Trung and YThin went to Buon Emap village, commune Ea Poc, district Cu Mgar in Daklak province and arrested a Degar-Montagnard villager named Y-Bien Nie. The authorities charged him with attempting to overthrow the Vietnamese government and dividing the Vietnamese people. Police lodged him at the prison facility in Cu Mgar district where they allegedly tortured him brutally by beating him with batons, stomping with boots, punching and applying electric shocks till he fell unconscious. At the end of September 2007, he was continued to be detained at Cu Mgar district prison facility and his condition was reported to be critical.

Even those who returned under the supervision of UNHCR have not been spared! On 19 July 2007, a 26 year-old Degar Christian man, Siu Nham from Ploi Wel village, commune Ia Ko, Cu Se district in Gialai province was arrested, tortured and imprisoned by Vietnamese security forces. He was sent to the Cu Se district prison. He had been previously forcibly repatriated to Vietnam by Cambodia on 20 July 2005.

II. Religious repression

In theory, the Constitution of Vietnam allows the freedom of worship. In practice, it is severely restricted. In November 2004, the Ordinance on Religion and Belief came into force and practice of religion inside the house churches became illegal.

On 1 June 2007, Vietnamese authorities sentenced 8 Degar

Montagnards to prison for being House Church Christians and possessing cell phones at Ploi Kho Krua village, commune Ia Hru, district Cu Se in Gia Lai province. The victims include 32-year-old Montagnard lady Nai H'Ngat from Kli Kia village, commune Nhon Hao, district Cu Se in Gia Lai province who had been sentenced to six years imprisonment; 31-year-old K'Pa Binh from Ploi Tai Glai village, commune Ia Ko, district Cu Se in Gia Lai province who had been sentenced to 15 years imprisonment; 42-year-old K'Pa Cin from Ploi Kho Krua village, commune Ia Hru, district Cu Se in Gia Lai province who had been sentenced to 15 years imprisonment; 35-year-old Rmah Ca from Ploi Tao Ko village, commune Ia Hru, district Cu Se in Gia Lai province who had been sentenced to nine years imprisonment; and 27-year-old Siu Ho from Ploi Tao Ko vil-

lage, commune Ia Hru, district Cu Se in Gia Lai province, who had been sentenced to eight years imprisonment.

On 3 June 2007, another five Degar Montagnards have been sentenced to prison for being House Church Christians. The victims include 54-year-old Siu Blok, from Ploi Breng 1 village, commune Ia Der, district Ia Grai in Gia Lai province who was arrested on 22 June 2006 and sentenced to eight years imprisonment for preaching and spreading Christianity; 57-year-old Puih Alum Ploi Blang 3 village, commune Ia Der, district Ia Grai in Gia Lai province who was arrested on 22 June 2006 and was sentenced to seven years imprisonment for being a House Church Christian; 35-year-old Ksor Phong from Ploi Sung village, commune Ia Kla, district Duc Co in Gia Lai province who has been arrested on 22 June 2006 and was sen-

tenced to six years imprisonment for being a House Church Christian; Rcom Wit from Ploi Ciom village, commune Ia Grang, district Ia Grai in Gia Lai province who had been arrested on 7 June 2006 and was sentenced to seven years imprisonment for being a House Church Christian and supporting the Montagnard Foundation; and 32-year-old Puih Hih from Ploi To Mong village, commune Ia To, district Ia Grai in the province of Gia Lai who had been arrested on 7 June 2006 and was sentenced to six years imprisonment for supporting the Montagnard Foundation and being a House Church Christian. All five are currently imprisoned at T-20 prison in Plei Ku.

Yet, according to the Americans, Vietnamese government is quite tolerant! With the United States and UNHCR toeing the line of Vietnam, the Montagnards face further challenges. ■

Burma ... Contd. from pg 9

for years been fleeing fighting and persecution at the hands of an increasingly brutal military. Others were economic migrants driven by the desire to escape Burma's grinding poverty and hardship. Burmese workers have been filling unpopular, low-paid jobs, often ending up doing incredibly dangerous or dirty work. The Thai government offers one-year migrant worker permits - albeit with restrictions and conditions - to those that can afford them. Many people, however, choose to take their chances and work illegally, leaving them vulnerable to unscrupulous employers.

Yet, those who have an interest to exploit the natural resources term the on-going crisis as Burma's internal affair. ■

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Nepal: Promise for a National Institution on Indigenous Janjatis

As reported in April to June 2007 issue of *Indigenous Rights Quarterly*, Asian Indigenous Tribal Peoples Network (AITPN) in cooperation with Kirat Welfare Society organised a "National Seminar on Transition in Nepal and the Role of National Institutions on Indigenous Peoples" in Kathmandu, Nepal on 2-3 May 2007. The national seminar highlighted the failure of the National Foundation for Development of Indigenous Nationalities (NFDIN) and all the participants recommended the need for establishment of a National Commission on Indigenous Janjatis. In fact, a model law on the National Commission for the Adivasi Janjatis was adopted.

The establishment of a National Commission on the Janjatis was included as one of the main demands by the Indigenous Nationalities Joint Struggle Committee (INJSC) which has been spearheading the movement of the indigenous nationalities for ensuring their rights in the transition period.

After 10 rounds of discussion, Minister for Peace and Reconstruction, Ram Chandra Poudel on behalf of the government of Nepal and Dr Om Gurung of the Nepal Federation of Indigenous Nationalities (NEFIN) and KB Gurung of the Indigenous Nationalities Joint Struggle Committee representing the indige-

nous nationalities signed the 20-Point Agreement on 7 August 2007. The 20-Point Agreement among others provided for at least one representation from each of the 59 officially recognized indigenous nationalities in the Constituent Assembly, which will draft the country's new constitution, formation of a "state restructuring commission" and the establishment of a national commission on the Janjatis.

Following the agreement, the NEFIN withdrew all of its protest programmes.

The text of the 20-point agreement is given below:

- While nominating candidates for the first-past-the-post electoral system arranged for the constituent assembly election in the present constitution, candidacy will be determined so as to ensure proportional representation of all castes and janajatis.

- While preparing a proportional list, all political parties participating in the election will make arrangements to ensure representation of each of the listed indigenous janajati communities.

- In case a listed indigenous janajati group is unable to secure its representation through both electoral systems, the Government of Nepal and the eight parties will reach a mutually acceptable conclusion in order to ensure that there is at least one representative of such a group and that the

representation is legal and constitutional.

- A state restructuring commission will soon be formed to present recommendations to the constituent assembly regarding a federal state structure based on ethnicity, language, geographic region, economic indicators and cultural distinctiveness while keeping national unity, integrity and sovereignty of Nepal at the forefront. The commission will include indigenous janajatis, Madhesis, dalits, women and eminent experts from various groups, regions and communities.

- A commission for indigenous janajatis will be formed.

- While so far only Nepali has been recognised as the government's official language, the constituent assembly will also make arrangements to give recognition to locally spoken mother tongues along with Nepali. The government will remain committed towards ensuring linguistic rights of its citizens.

- Arrangements will be made for the general public to seek and receive information on matters of public importance, including the constituent assembly, in their respective mother tongues.

- The Government of Nepal has agreed in principle that all groups, genders, communities, castes and ethnicities should be represented in political parties at all levels. A fully representative task-force will be formed immediately to conduct a study in order to ensure inclusive participation and proportional representation of all castes, ethnicities, groups, communities, genders and regions in all bodies and levels of the state.

- All sectors will take initiatives to practically implement their legal and policy-level commitments to ensuring inclusive and proportional representation of all genders, classes, regions and communities, including indigenous

In its "National Seminar on Transition in Nepal and the Role of National Institutions on Indigenous Peoples" in May 2007, AITPN for the first time floated the idea of a National Commission for the Janjatis. It was endorsed by then Representative of OHCHR to Nepal, Ms Lena Sundh and rightly included in the demands of the Janjatis.

The model law on the National Commission for the Janjatis prepared by AITPN is also available in Nepali.

janajatis in all bodies and levels of state.

- A system will gradually be developed to receive advice and consultation from concerned groups and bodies while making important decisions regarding various groups, regions, genders and communities, including indigenous janajatis.

- Arrangements will be made to immediately pass the proposal to ratify and adopt Convention 169 of the International Labour Organisation.

- Appropriate steps will be immediately taken to complete the necessary legal process for adopting the United Nations Declaration on the Rights of Indigenous Peoples.

- A District Coordination Committee for indigenous janajatis will be formed in a democratic and transparent manner. Also, high importance will be given to the involvement of the Nepal Federation of Indigenous

Nationalities and the National Federation of Indigenous Women in this process.

- In keeping with the spirit and sentiment of gender mainstreaming in development plans and programmes, including interim planning, and paying attention to women and diversity in programme implementation and profit sharing, emphasis will be laid upon participation of women from indigenous janajati, dalit and Madhesi groups.

- As party to the Convention on Biodiversity, the country will ensure that the traditional knowledge, skills, practices and technology of indigenous janajatis are harnessed and preserved.

- The country will honour the renowned geographer Dr. Harka Gurung.

- Arrangements will be made to provide Rs. 1 million each as relief and compensation to the families of all the

Nepalis who died in the helicopter crash in Ghunsa, Taplejung.

- The process started by the government to find a permanent solution to the problems faced by freed kamaiyas (bonded labourers) will be taken forward in an effective manner as per the agreement.

- The government will make a serious effort to reach an agreement for addressing the demands of various groups and communities, including Madhesis, women and dalits through talks and discussions with the respective groups.

- Nepal Federation of Indigenous Nationalities, Indigenous Nationalities Joint Struggle Committee and National Indigenous Women Federation request all indigenous communities in the country to unite for the success of the upcoming constituent assembly election. ■

Bangladesh: Evictions and land grabbing in the CHT's

Making the optimum (mis)use of the emergency rule, the government of Bangladesh has once again tried to forcibly evict the indigenous Jumma peoples and settle the illegal plain settlers on the ancestral lands of the indigenous Jumma peoples of Sadhana Tila under the Dighinala Police Station in Khagrachari district of the Chittagong Hill Tracts.

I. Attempts to capture indigenous peoples' lands

On 13 August 2007, the illegal plain settlers tried to forcibly capture the lands of the Buddhist temple at Sadhana Tila which is predominantly inhabited by the indigenous Buddhist Chakmas from time immemorial. This ethnic cleansing programme, like any other previous attempts of ethnic cleansing of the indigenous peoples,

has been sponsored by the Bangladesh army. Dighinala Zone Commander of the Bangladesh army, Major Qamrul Hassan ordered the Buddhist monks of the temple and the indigenous people to leave Sadhana Tila area in order to make way for so-called peaceful settlement of over 800 illegal plain settlers' families. The Bangladesh army allegedly announced an incentive grant of Taka 50,000 for each settler family who will be willing to settle in the Sadhana Tila as well as Taka 1,000 as monthly allowance. Those who refused to take over the lands of the indigenous Jummas were allegedly threatened that free food ration supply would be cut off.

Inspired by new incentives and frightened by any possible sanctions, hundreds of illegal plain settlers started coming into the Sadhana Tila and cut-

ting the jungle around the Buddhist temple under the cover of the military and the police. Whenever the indigenous peoples sought to protect their lands, the illegal settlers erupted in a riotous mood.

On 23 August 2007 at about 5 pm, a group of illegal settlers broke into the temple boundary and began cutting trees and shrubs belonging to the temple. When the Jumma villagers protested, the army and the police falsely accused the Buddhist monks of possessing arms and wanted to search the temple. A violent confrontation between the Jummas and the illegal settlers was narrowly prevented after the intervention of Union Council Chairman, Mr Paritosh Chakma.

The visit of the Chief of Bangladesh Army General Moeen U Ahmed, the defacto ruler of

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India: Implications of the Forest Rights Act of 2006 in the Northeast [Note prepared by Campaign For Survival and Dignity]

The Campaign for Survival and Dignity - a coalition consisting of Bharat Jan Andolan, National Front for Tribal Self Rule, Shoshit Jan Andolan (Maharashtra), Adivasi Mahasabha (Gujarat), Adivasi Jangal Janjeevan Andolan (Dadra & Nagar Haveli), Jangal Jameen Jan Andolan (Rajasthan), Madhya Pradesh Van Adhikar Abhiyan (Madhya Pradesh), Jan Shakti Sanghathan (Chattisgarh), Peoples Alliance for Livelihood Rights, Chattisgarh Mukti Morcha, Orissa Jan Sangharsh Morcha, Campaign for Survival & Dignity (Orissa), Orissa Adivasi Manch, Orissa Jan Adhikar Morcha, Adivasi Aikya Vedike (Andhra Pradesh), Andhra Pradesh Vyavasaya Vrithidharula Union, Campaign for Survival and Dignity - Tamilnadu, Bharat Jan Andolan (Jharkhand) in its policy paper clarified a number of concerns that have been raised regarding the impact of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 in the Northeastern States of India.

Most of these concerns revolve around (1) fears of the Act becoming an instrument for migrants from other areas to get title to property illegally; and (2) apprehensions that the Act will restrict or undermine existing customary rights over land and other natural resources

This note discusses some of these issues and the role of the Supreme Court in these and related matters.

The impacts of this Act in the Northeast India

There are three broad categories of legal status in the Northeast India, on which the effects of the Act will be different.

Nagaland and Mizoram: No effect unless State Assembly passes resolution

The States of Nagaland and Mizoram are protected under Articles 371(A) and 371(G) of the

The Forest Rights Act basically seeks to legalise existing rights to undo a historic injustice against indigenous and tribal peoples of India. To the extent possible, the Act also addresses two systems of administrative arrangements especially under the 5th and 6th Schedules of the Constitution.

Constitution respectively. Article 371 (A) provides that “(1) Notwithstanding anything in this Constitution,— (a) no Act of Parliament in respect of—(ii) Naga customary law and procedure,(iv) ownership and transfer

of land and its resources, shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides.” Also, Article 371 (G) provides that “Notwithstanding anything in this Constitution,—(a) no Act of Parliament in respect of—(ii) Mizo customary law and procedure, (iv) ownership and transfer of land, shall apply to the State of Mizoram unless the Legislative Assembly of the State of Mizoram by a resolution so decides”.

Areas under the Sixth Schedule

The areas of Assam, Tripura, Mizoram and Meghalaya that fall under the Sixth Schedule have a different type of protection. The Sixth Schedule clearly provides that the Autonomous District Councils

(ADCs) of these areas have the power to make laws with respect to forests (excepting reserved forests) and with respect to land. Since these laws are backed by the Constitutional powers of the ADCs, they would automatically override the Central Act, and could be used to ensure that rights are granted and regulated as per decisions of the ADCs.

Reserved forests

In the case of ‘reserved forests’ in the Northeastern states, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 becomes applicable. In most instances, these ‘reserved forests’ (RFs) have been notified without proper settlement of rights required by law and therefore the Forest Rights Act will enable Scheduled Tribes and traditional communities to claim rights in them.

In the case of migrants and outside populations in RFs

The migrants who are not Scheduled Tribes (STs) in the area in which rights are being claimed (migrants who are STs elsewhere will still be considered non-STs in the Northeast) will be considered as ‘Other Traditional Forest Dwellers’ for the purpose of the Act provided they fulfil the criteria. Section 2(o) of the Act specifies that: “‘other traditional forest dweller’ means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs. Explanation- For the purpose of this clause, ‘generation’ means a period comprising of twenty-five years.”

Therefore any non-ST claiming rights under the Forest Rights Act must have been residing in forest areas

for 75 years prior to 2005 (i.e since 1930). Enforcing this restriction can be done first through the village assemblies or Traditional Institutions and then by the Sub-Divisional Level Committees and District Level Committees, where, in the case of Autonomous District Councils (ADC)/Regional District Council (RDC) areas, half of the members will be representatives of the ADC/RDC. These Committees have the power to reject claims approved by village assemblies or traditional village institutions at the lower levels, and could easily do so with respect to fake claims of people who have come recently.

Regarding fears of restrictions on existing rights in VIth Schedule areas

The other fear often expressed is whether this Act will erode or override (cut into) existing rights. The Act provides safeguards in this respect as well. Section 3(1)(j) of the Act provides that any right already recognised under State or customary law will continue to be a right under this Act. Section 3(1)(l) also adds that “any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers” but “excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal” will continue under the Act. Rule 20 in the draft Rules to the Act adds that any such right has to be exercised in accordance with the applicable regulations that govern it today, to ensure that the existing situation is left undisturbed by this Act.

The Supreme Court's track record in removing people's control over forests and resources

Since 1995, when a case was filed in the Supreme Court called T.N. Godavarman Thirumalpad vs. Union of India and Ors., the Court has demanded stringent forest protection leading to the State governments evicting ‘encroachers’ from the forest lands. But in the context of the non-settlement or improper settlement of forest rights, the result was forcible illegal eviction of some 300,000 forest

The Forest Rights Act was adopted in December 2006 and the rules have subsequently been framed. But its rules have not been notified as a section of the ruling Congress Party is reportedly against the Act at the behest of the environmental extremists who oppose the Act.

dwellers resulting in clashes leading to death of scores of people across the country. The Court has been passing a series of orders that directly attack the communities’ right to manage their own resources. The Court has consistently taken the attitude that no use of any forest anywhere in the country should take place except as per the Forest Departments’ working plans/schemes – even where those forests are actually owned by the community – and any diversion of government or community forests to other uses needs to have the sanction of the Supreme Court/Ministry of Environment and Forests (MoEF). After initially banning all fellings in 1996, in 1998 the Supreme Court passed a sweeping order with respect to all Northeastern States, where it held that no more felling of any trees in any forest (including community or private forests) could occur until the already felled timber had been sold. Further, it held that all forests, including those under the ADC’s, had to be managed in accordance with Forest Department working plans or schemes.

These orders, which run totally against any community control or management, indicate the attitude of the Court towards forest dwellers, the Vth Schedule Areas, as well as the ADCs and community institutions in the Northeast enjoying protection of customary rights. This situation necessitated the launch of the movement of Adivasis across the sub-continent to struggle for the rectification of the historic injustice through a legislative process to finally recognize the traditional and existing rights of Scheduled Tribes and Other Traditional Forest Dwellers resulting in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. We see this Act as both a victory as well as subversion on account of inclusions of provisions that weaken community decision making and rights, requiring the continued struggle for amendments in the Act. Indeed, it is the court, advised by a Committee of ultra wildlife conservationists, and not the Forest Rights Act, that is the most immediate threat to the rights and powers of the traditional institutions or Autonomous/ Regional District Councils in the Northeast.

Finally, this Act is crucial to the rights of millions of tribals and other forest dwellers in other parts of India due to their ancestral lands being declared state ‘forests’ without recognising their customary rights. The Act itself came up in the context of the Ministry of Environment and Forests ordering large scale eviction of ‘encroachers’ based on Supreme Court’s judgements, including millions of Scheduled Tribes whose rights have in the first place remained unrecognized till date in violation of forest laws. The Forest Rights Act 2006 merely seeks to recognize the existing rights to undo a historic injustice against the indigenous and tribal peoples. ■

Permanent Forum: Unprofessional and gets personal

"When we criticize the Permanent Forum, we criticize it as an institution. We do not target any individual member or staff." - AITPN in its reply to Ms Victoria Tauli Corpuz, Chairperson of the United Nations Permanent Forum on Indigenous Issues on 22 August 2007.

AITPN's interim evaluation report, *Permanent Forum: Manufacturing recommendations* published in IRQ issue of April to June 2007, as expected, evoked strong reactions. While many indigenous organisations welcomed the evaluation, the Secretariat of the Permanent Forum and Secretariat of the Convention on Biological Diversity rather attacked the persons who might be involved in the evaluation. Experts of the Forum described it as "too much".

It is unlikely that indigenous peoples' organisations or their representatives in future will dare to respond to the evaluation. The message from the Secretariat and the Permanent Forum members was clear and unambiguous: Make no mistake, the empire shall strike back, and you join evaluation of the Forum at your own perils!

None of the responses from the members and the Secretariat of the Forum addressed the problems that AITPN had raised: (i) style/format of the report which fails to adequately reflect the interventions of the experts, States, indigenous peoples etc or summary records of the debates; (ii) problems with closed door meetings and time management; and (iii) the need to avoid repetitive recommendations in order to include indigenous peoples' interventions.

In fact, present and former staff of the Secretariat of the Permanent Forum gave the impression that the Forum has

reached the optimum level of efficiency. This leaves no desire or scope for improvement in the future.

I. No ownership

AITPN highlighted that there are serious problems with the style/format of the annual reports of the Permanent Forum which fail to reflect oral statements made each year. Often, indigenous peoples travel from the most unconnected places on the Mother Earth to speak about their plight. They only get recommendations after recommendations, which do not even highlight their own specific issues, not to mention about resolving their problems.

Ms Sonia Smallacombe of the Secretariat of the Permanent Forum on Indigenous Issues tersely replied: "The secretariat of the UNPFII does not write the report. The UN has a vast Conference Services and that is their job".

Nothing could be more unfortunate that the Secretariat of the Forum washing off its hands with regard to the annual sessional reports. What does the Secretariat do is the reaction AITPN heard from Indigenous Peoples with regard to the response of the Secretariat of the Forum that it does not write the report.

II. No to "judge and jury"

"I think a decent evaluation needs to interview not only members of the Secretariat but also the members of the

Forum. This evaluation, clearly, at the outset is out to prove that the Permanent Forum is a failure, which is rather unfortunate. The Forum has limitations especially because it is a new body which is still evolving and finding its way in the thick of the maze of the UN system. While the Forum welcomes a review of its performance, such a "review" will not merit serious attention because of the lack of neutrality and objectivity"- John Scott, Programme Officer for Traditional

Permanent Forum has been personalised! The responses of the members, Secretariat and a few other UN staff conveyed the message that they are the Forum and therefore, they took the evaluation personally. One UN staff did not even read the name of the sender of the email from AITPN but called name of one individual formerly associated with AITPN. That PFII is a UN body and therefore open to public scrutiny is not recognised! So much love for the Forum?

Knowledge, Innovations and Practices of the Secretariat of the United Nations Convention on Biological Diversity.

This view was also supported by Ms Corpuz. In its reply to Ms Corpuz, AITPN asserted: "To what extent the views of the members of the Forum, the staff of the Secretariat or the members of the Inter-Agency Task Force - who are indeed the subjects

of the evaluation - can be given the leverage to be judge and jury on themselves is a decision that AITPN shall take after considering the yardsticks of the principles of independence and impartiality. They can all provide information but they cannot simply be the judge and jury on themselves".

III. No response

Most indigenous peoples want their situations reflected in the Forum's Annual Reports to the ECOSOC. Therefore, it is of paramount importance that their oral interventions are also included in the reports of the UNPFII to the

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CERD Committee:

Race and discrimination in Indonesia

The United Nations Committee on the Elimination of Racial Discrimination considered the initial to third periodic reports of Indonesia (CERD/C/IDN/3) submitted in one document at its 1831st and 1832nd meetings (CERD/C/SR.1831 and 1832) held on 8 and 9 August 2007.

The report of Indonesia was far from satisfactory. Asian Indigenous and Tribal Peoples Network submitted a shadow report titled "Indonesia: Piecemeal approaches to systemic and institutionalised discrimination". AITPN made a number of recommendations for consideration by the CERD Committee.

The Concluding Observations and Recommendations of the CERD Committee are given below:

C. Concerns and Recommendations

14. The Committee notes that the Convention is not self-executing in Indonesian law. While appreciating the efforts undertaken to harmonize national legislation with the Convention, and noting that a draft law on the elimination of racial and ethnic discrimination is under consideration, the Committee regrets that it has not received sufficient information on the extent to which the Convention has been incorporated into domestic law. (art. 2)

The Committee encourages the State party to continue the review of its laws and regulations in order to ensure their full compliance with the Convention. It also encourages the State party to adopt a comprehensive law on the elimination of racial discrimination, taking into consideration all elements of the definition of racial discrimination provided in article 1 of

the Convention, and guaranteeing the right everyone not to be discriminated against in the enjoyment of all rights enumerated in article 5 of the Convention. The Committee also wishes to receive more detailed information on measures adopted to ensure that regional laws and regulations also comply with the Convention.

15. The Committee notes that the State party recognizes the existence of indigenous peoples on its territory, while using several terms to designate them. It is concerned, however, that under domestic law, these peoples are recognized "as long as they remain in existence", without appropriate safeguards guaranteeing respect for the fundamental principle of self-identification in the determination of indigenous peoples. (art. 2 and 5)

The Committee draws the attention of the State party to its General recommendation 8 (1990), and recommends the State party to respect the way in which indigenous peoples perceive and define themselves. It encourages the State party to take into consideration the definitions of indigenous and tribal peoples as set out in I.L.O. Convention No. 169 of 1989 on Indigenous and Tribal Peoples, and to envisage ratification of this instrument.

16. The Committee welcomes the acknowledgement made by the State party that it is a multi-ethnic, multi-cultural, multi-religious, and multi-lingual country, as well as its commitment to achieve "unity in diversity" and respect of human rights for all on an equal basis. The Committee is concerned, however, that in practice, the rights of indigenous peoples have been compromised, due to the interpretations adopted by the State party of national interest, modernization and

economic and social development. (arts. 2 and 5)

The State party should amend its domestic laws, regulations and practices to ensure that the concepts of national interest, modernization and economic and social development are defined in a participatory way, encompass world views and interests of all groups living on its territory, and are not used as a justification to override the rights of indigenous peoples, in accordance with the Committee's General Recommendation 23 (1997) on indigenous peoples.

The State party should recognize and respect indigenous culture, history, language and way of life as an enrichment of the State's cultural identity and provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics.

17. The Committee notes with concern the plan to establish oil palm plantations over some 850 kilometers along the Indonesia-Malaysia border in Kalimantan as part of the Kalimantan Border Oil Palm Mega-project, and the threat this constitutes for the rights of indigenous peoples to own their lands and enjoy their culture. It notes with deep concern reports according to which a high number of conflicts arise each year throughout Indonesia between local communities and palm oil companies. The Committee is concerned that references to the rights and interests of traditional communities contained in domestic laws and regulations are not sufficient to guarantee their rights effectively. (arts. 2 and 5)

The Committee, while noting that land, water and natural resources shall be controlled by the State party and exploited for the greatest benefit of the people under Indonesian law, recalls that such a principle must be exercised consistently with the rights of indige-

nous peoples. The State party should review its laws, in particular Law No. 18 of 2004 on Plantations, as well as the way they are interpreted and implemented in practice, to ensure that they respect the rights of indigenous peoples to possess, develop, control and use their communal lands. While noting that the Kalimantan Border Oil Palm Mega-project is being subjected to further studies, the Committee recommends that the State party secure the possession and ownership rights of local communities before proceeding further with this Plan. The State party should also ensure that meaningful consultations are undertaken with the concerned communities, with a view to obtaining their consent and participation in the Plan.

18. The Committee notes with concern that, although it has been abolished, the transmigration programme has longstanding effects, as exemplified by the conflict that took place between the Dayak and the Madura ethnic groups in Palangkaraya, Central Kalimantan. The Committee also notes with concern the challenges faced by the State party due to the increased number of internally displaced persons, resulting not only from natural disasters but also from conflicts, and the cultural misunderstandings that have arisen between communities. (arts. 2 and 5)

The Committee strongly recommends that the State party increase its efforts to prevent the resurgence of ethnic conflicts on its territory. It should assess the adverse impact of the transmigration programme, in particular on the rights of local communities, and promote mutual understanding between communities, as well as mutual knowledge and respect for their histories, traditions and languages. It should ensure that violent acts are duly investigated, prosecuted and sentenced. The Committee also

encourages the State party to prepare a set of guiding principles for internally displaced persons with the aim of preventing racial discrimination, as envisaged by the State party. It suggests in this regard that the State party take into consideration the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2).

19. The Committee notes the information provided by the State party that non-citizens have limited civil and political rights, but that these limitations are applied in accordance with the Convention and the Committee's General Recommendation 30 (2004) on discrimination against non-citizens. (arts. 2 and 5)

The Committee recommends that the State party include more detailed information on the rights of non-citizens in its next periodic report. The Committee encourages the State party to envisage ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

20. The Committee notes with satisfaction that Presidential Instruction No. 56 of 1996 abolished SBKRI (Proof of Indonesian Citizenship) for citizens of Chinese origin and other citizens of foreign descent. It remains concerned, however, at the insufficient level of implementation of that Instruction. In particular, it notes with concern that, as is acknowledged by the State party, banks continue to require SBKRI despite Presidential Instruction No. 26 of 1998 specifically prohibiting them to do so. (arts. 2 and 5)

The Committee recommends that the State party strengthen its efforts to ensure the practical implementation of the abolition of SBKRI in all regions, and effectively prohibit its use either by public institutions or private entities

such as banks. The State party should adopt programmes to raise awareness about the prohibition of SBKRI and assist individuals who have been required to produce SBKRI in obtaining remedy.

21. The Committee, while noting the statement made by the delegation that there are no "recognized" or "non-recognized" religions in Indonesia, expresses concern at the distinction made between Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism, which are often referred to in legislation, and other religions and beliefs.

The Committee is concerned at the adverse impact of such a distinction on the rights to freedom of thought, conscience and religion of persons belonging to ethnic groups and indigenous peoples. It notes with particular concern that under Law No. 23 of 2006 on Civic administration, individuals are to mention their faiths on legal documents such as identity cards and birth certificates, and that those wishing either to leave the column blank or to register under one of the "non-recognized" religions, reportedly face discrimination and harassment. The Committee also notes with concern that men and women of different religions face great difficulties in officially registering their marriages, and that their children are not provided with birth certificates, as acknowledged by the State party. (arts. 2 and 5)

The Committee recommends that State party treat equally all religions and beliefs and ensure the enjoyment of freedom of thought, conscience and religion for ethnic minorities and indigenous peoples. Noting that the State party is considering removing the mention of religion on identification cards in order to be in line with the objectives of the Convention, the Committee strongly recommends it to do so in a timely manner, and to extend

such a policy to all legal documents. The Committee also recommends the adoption of legislation allowing individuals to contract a civil marriage if they so wish.

22. The Committee welcomes efforts made towards the decentralization of power and consolidation of regional autonomy. It regrets, however, that it has not received sufficient information on the status of implementation of the Papua Special Autonomy Law No. 21 of 2001, and expresses concern about information according to which Papuans continue to experience great poverty. (arts. 2 and 5)

The Committee recommends that the State party provide information on the implementation of the Papua Special Autonomy Law No. 21 of 2001, as well as on measures adopted to ensure the enjoyment by Papuans of their human rights without any discrimination.

23. The Committee notes that no discrimination-related cases have been brought before the courts of the State party. It notes with concern the view expressed in the report of the State party that there is no racial discrimination in Indonesia, direct or indirect, since domestic laws guarantee the elimination of racial discrimination. The Committee notes that this statement is in contradiction with other parts of the report, which acknowledge difficulties in the implementation of the Convention, as well as efforts towards the harmonization of laws with the Convention. (articles 4 and 6)

The Committee draws the attention of the State party to its General recommendation 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, and recalls that the absence or small number of complaints, prosecutions and convictions relating to acts of racial discrimination should not be viewed as neces-

sarily positive. The State party should inquire whether this situation is the result of inadequate information provided to victims concerning their rights, their fear of social censure or reprisals, their fear of the cost and complexity of the judicial process, a lack of trust in the police and judicial authorities, or the insufficient level of awareness by the authorities of offences involving racism. The State party should take, in particular on the basis of such review, all necessary measures to ensure that victims of racial discrimination have access to an effective remedy.

24. The Committee notes with concern that the violations of human rights which were committed during the riots of May 1998 still remain unpunished. It is concerned at reports according to which Indonesians of Chinese descent were specifically targeted, and at the contradictory information the State party has provided in its report and its written replies in this respect. The Committee is further concerned at the conclusion reached by Komnas-HAM that gross violations on human rights had been committed. It is further concerned that Komnas-HAM's recommendation that an ad hoc human rights tribunal be established has not been implemented yet, following the Attorney General's position that the investigations remained incomplete. (arts. 4 and 6)

The Committee strongly recommends that the State party take all measures to ensure that acts of racial discrimination committed during the riots of May 1998 are duly prosecuted and punished.

25. The Committee notes with concern that Komnas-HAM has encountered difficulties in the discharge of its mandate, due in particular to the refusal made by the military to comply with its requests to submit evidence. It also notes that Law No. 39 of

1999 does not contain any provision ensuring legal immunity for its members, and that the status and mandate of the secretariat of the Commission are currently set forth in a Presidential Decree, which jeopardizes its independence and autonomy.

The Committee recommends that the State party reinforce the independence of Komnas-HAM, in line with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), and guarantee the legislative immunity of its members and staff in the exercise of their duties. The State party should also strengthen the Commission's mandate, in particular its monitoring functions and investigation powers, and ensure its participation in the follow-up and implementation of the present concluding observations.

26. The Committee recommends that the State party take into account the relevant provisions of the Durban Declaration and Programme of Action when implementing the Convention in its domestic legal order, particularly as regards articles 2 to 7 of the Convention. The Committee also urges that the State party include in its next periodic report information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

27. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in resolution 47/111. In this connection, the Committee cites General Assembly resolution 57/194 of 18 December 2002, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with

regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment. A similar appeal was made by the Assembly in resolution 58/160 of 22 December 2003.

28. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention and invites it to consider doing so.

29. The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in Indonesian language.

30. The Committee recommends that the State party consult widely with organizations of civil society working in the area of combating racial discrimination, in connection with the preparation of the next periodic report.

31. The State party should, within one year, provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 17, 20 and 25 above, pursuant to paragraph I of rule 65 of the Committee's rules of procedure.

32. The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting (HRI/GEN/2/Rev.4).

33. The Committee recommends that the State party submit its fourth, fifth and sixth periodic reports in a single document, due on 25 July 2010, taking into account the guidelines for the CERD-specific document, as adopted by the Committee at its 71st session, and that the report be an update document and address all points raised in the present concluding observations. ■

Bangladesh .. Contd. from pg 12

Bangladesh, to Dighinala on 28 August 2007 further fueled the conflict.

On 1 September 2007, a group of settlers led by Md. Malek and Chand Mian pulled down the signboard of Sadhana Tila Vana Bihar (temple) and smashed it. They also threatened the Buddhist monks to leave the temple and destroyed a few houses of the indigenous Chakmas.

Again, on 2 September 2007, the illegal plain settlers destroyed some of the houses of indigenous Jumma peoples around Sadhana Tila Buddhist temple.

II. Indigenous leaders under threats

The indigenous leaders who have been playing active role to defend the rights of the indigenous peoples in Sadhana Tila have been facing the music from the Bangladesh army and the police.

On 15 August 2007, Zone Commander of Dighinala, Major Qamrul Hassan allegedly threatened to kill Sattyendriyo Chakma, headman of Baghaichari Mouza (No. 50). When this report was published in a leaflet by the Student and Youth Committee Against Land Aggression, Mr Chakma was again summoned to the zone headquarters, interrogated and threatened with death by the Zone Commander of Dighinala if he did not allow the illegal settlers to capture the Sadhana Tila land.

III. Temporary relief but fear lurks in their hearts

Again on 3 September 2007, the plain settlers launched a failed attack on the indigenous peoples. Bangladesh army from the Babuchara camp had to be deployed to avoid a major communal bloodshed as hundreds of indigenous Jumma peoples came out of their houses to face the illegal settlers and the army. The army commander of the Babuchara

BAN ON CONSTRUCTION OF BUDDHIST TEMPLES

Among others, the Care-taker government of Bangladesh did not take over the lands at Sadhana Tila because it would have meant destroying the Buddhist temple. Bad publicity!

Then came the dubious order. On 12 September 2007, Md.

Abdul Matin, the Sub-District Executive Officer of Mahalchari in Khagrachari district of the CHTs, Bangladesh issued a public notice to prohibit "construction of new Mosque, Hindu temple and Buddhist temple" in Mahalchari sub-division without prior permission of the authorities concerned.

The order is not targeted against the Muslims or Hindus but against indigenous Buddhists. Repression can be perpetrated under different names!

camp went to the Buddhist temple to make peace and declared that "from tomorrow no settler will come to Sadhana Tila", thereby showing who was the main instigator.

This has given a temporary relief for the indigenous peoples of Sadhana Tila. Various indigenous organizations including the Asian Indigenous and Tribal Peoples Network (AITPN) and indigenous Jumma organizations around the world campaigned against the imminent eviction of indigenous peoples from the Sadhana Tila area.

Although there has been an end to cutting of jungle in Sadhana Tila area since 4 September 2007, the government has not formally announced that it has put off the plan to settle the illegal plain settlers in Sadhana Tila. This has kept the fear alive in the heart of every indigenous peoples of Sadhana Tila. ■

Parmanent ... Contd. from pg 15

ECOSOC. AITPN recommended that this could be done by collating recommendations made on a thematic issue in the last six years as "Standing Recommendations" and revise them as and when necessary like the UN Treaty Bodies' General Comments and reduce the number of recommendations in the Annual Reports.

The Secretariat of the Forum, staff belonging to the Inter-Agency Task Force and members of the Forum have not yet responded as to whether they also agree with the above recommendation. Privately, members of the Forum justified the present format of reporting on the ground that the Permanent Forum is a recommendatory body! All the bodies of the UN with the exception of the Security Council are only recommendatory. The WGIP was not more powerful when it reflected the situation of indigenous peoples in its annual report. This is a strange explanation from the experts!

So long indigenous peoples' statements are not included in the Annual Reports to the ECOSOC, indigenous peoples will increasingly fail to relate to the Forum. The Forum will eventually lose its relevance to the activists. The proposed new mechanism of the Human Rights Council may indeed hasten the process of the Permanent Forum's ultimate irrelevance.

AITPN is not being prophetic, but simply sharing the experience of the participation of women's rights activists in the Commission on Human Rights (now HRC) VIS-A-VIS the Commission on the Status of Women. AITPN fails to understand why, if those who are at the helms and claim to be truly committed to the Forum regard AITPN evaluation as a threat rather than an opportunity to improve its functioning.

Read history! ■

CERD Committee: An early warning for the Philippines

The United Nations Committee on the Elimination of Racial Discrimination at the 71st session held from 30 July to 17 August 2007 considered the situation of the Subanon indigenous peoples of Mount Canatuan, Siocon, Zambonga del Norteo, the Philippines under its early warning and urgent action procedure, and issued notice to the government of the Philippines. The CERD Committee was acting on a complaint filed by some non-governmental organisations.

The Committee expressed concern over a number of issues concerning the Subanon indigenous peoples including non-implementation of the Indigenous Peoples Rights Act (IPRA) of 1997 which provides for the free, prior and informed consent of indigenous communities before implementation of any development project on their ancestral lands; imposition of restrictions on the provision of free, prior and informed consent of indigenous communities by the amendments introduced in 2002 and 2006 to the Implementing Rules and Regulations of 1998; failure of the National Commission of the Indigenous Peoples of Philippines to register the Certificate of Ancestral Domain Title of the Subanon, although the Subanons have been demanding recognition of their land rights since 1987; grant of mining concessions to the Canadian mining company "PVI Pacific" by the Siocon Council of Elders to conduct mining operations at Mount Canatuan, a sacred site of the Subanons without the prior consent of the Subanon indigenous community; and alleged human

rights violations against the Subanon community including physical attacks, attacks on their property, sacred sites and institutions, and increased racial discrimination against them.

The Committee also asked the government of the Philippines to respond to the above allegations and to provide information on the measures adopted by it to protect members of the Subanon community against acts of hatred and violence. The Philippines

Philippines is the second country from Asia to have been considered under the Early Warning Procedure of the CERD Committee. In 2003, the CERD Committee issued similar notice to Laos.

has been asked specifically to inform about the number of complaints it received regarding human rights violations against the Subanon indige-

nous peoples, the measures taken to investigate such complaints, and the number and nature of sentences, if any, imposed on the perpetrators, as well as the assistance provided to the victims.

The Philippines has been asked to submit its response and comments by 31 December 2007 failing which the Committee will consider adopting a decision without the report of the government at its 72nd session to be held in Geneva from 18 February to 7 March 2008.

The Committee has also asked the Philippines to submit its 15th to 19th periodic reports, which are overdue since 1998. In case the Philippines fails to submit a report by 30 June 2008, the Committee has stated that it would adopt concluding observations based on the information received from other sources, including from non-governmental organisations at its 73rd session to be held from 28 July to 15 August 2008. ■

**Mexico:
Racism, kicking and alive**

In August 2007, Nobel Laureate Rigoberta Menchu, wearing a Mayan dress, the traditional attire of indigenous peoples in central America, was virtually thrown out by the staff at Cancun's five-star Hotel Coral Beach until other guests recognised Ms Menchú and interceded. She was in the Mexico at the request of President Felipe Calderón to participate in a conference on drinking water and sanitation and was due to give interviews at the hotel.

**Nepal:
Ratifies ILO Convention No. 169**

On 22 August 2007, the Interim Parliament of Nepal ratified the International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. Ratification of ILO convention No. 169 was one of the 20-point agreement reached between the government and the indigenous nationalities on 7 August 2007.

**Peru: Ordered to report
on the uncontacted tribes**

About 15 different "uncontacted tribes" of Peru have been facing extinction by the impacts of the outsiders. In August 2007, the Inter-American Commission on Human Rights (IACHR) asked the government of Peru to submit a report on the measures taken to protect the "uncontacted tribes" of Amazon. The IACHR's directive came after the National Association of Amazon Indians in Peru sent two appeals to the Commission regarding the forcible displacement and the threat of assimilation due to gas exploration in the Kugapakori-Nahua-Nanti Reserve in the south-east of Peru and Barrett Resources and Repsol YPF in north-

ern Amazon where at least two uncontacted tribes live.

**Botswana:
Bushmen arrested for hunting**

On 4 September 2007, the police withdrew all charges against 21 Bushmen who were arrested in June and July 2007 for hunting on their ancestral land in the Central Kalahari Game Reserve in Botswana. But in the last week of August 2007, six other Gana and Gwi Bushmen were also arrested for hunting and they have not been released. Earlier, on 13 December 2006, the High Court of Botswana upheld the rights of the Bushmen to live in their ancestral lands in the Central Kalahari Game Reserve as well as their hunting rights. But the government of Botswana continued to insist that the Gana and Gwi tribals do not have the right to hunt within the reserve and arrested those who were caught hunting. Contempt of the court by the government!

**Bangladesh:
The CHTs Accord in tatters**

On 27 August 2007, the High Court of Bangladesh directed to the government of Bangladesh to explain as to why the Chittagong Hill Tracts (CHT) Peace Accord of 1997 signed with the Parbatya Chattagram Jana Sanghati Samity (PCJSS) should not be declared "illegal". The two-judge bench comprising Justice Shah Abu Nayeem Mominur Rahman and Justice Zubayer Rahman Chowdhury also set aside certain provision of the Peace Accord by directing the authorities to allow the illegal plain settlers who were implanted into the Chittagong Hill Tracts to register themselves in the voters' list.

Although the Chittagong Hill Tracts Accord of 1997 has never been implemented by both the governments of Sheikh Hasina who inked

the Accord and her successor Begum Khalida Zia, the CHTs Accord remained to be the country's only legal instrument to which the indigenous peoples of Chittagong Hill Tracts can look upto to safeguard their rights.

The direction of the High Court has come as a shot in the arms of the military who have been involved in blatant violations of human rights in the CHTs. It is strongly believed that the government will not challenge part of the High Court's direction relating to enrolment of the plain settlers in the voters' list in CHTs.

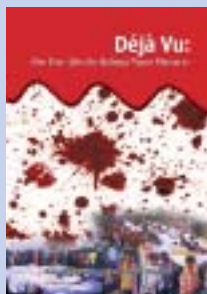
**Sri Lanka: Veddas arrested
for collecting honey**

In August 2007, four indigenous Veddas were arrested for collecting honey at Maduru Oya National Park, Sri Lanka. They were collecting honey for the annual Esala Perahera festival scheduled to be held at the Tooth Temple, Kandy on 24 August 2007. The festival is held to ward off hunger, disease and other disasters. In 1983, the government designated their forest habitat as the Maduru Oya National Park and banned them from hunting and gathering. In 1998, the government allowed a specific number of tribals to hunt and gather in a small area of the national park but those without permits face fines or imprisonment if they are caught. The four arrested indigenous persons were charged with illegal trespass and carrying arms with intention to hunt..

SR on IPs: Limited promotion

On 28 September 2007, Human Rights Council extended and revised the mandate of the Special Rapporteur on Indigenous Peoples. S/he can promote UN Declaration on the Rights of Indigenous Peoples "where appropriate" i.e. not in the US, Australia, Canada and New Zealand! ■

Latest Publications from AITPN



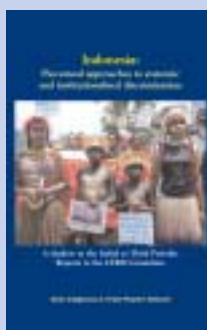
Déjà vu: One Year After the Kalinga Nagar Massacre, January 2007

This report examines the wider issues surrounding the Kalinga Nagar massacre like land alienation as a result of industrialisation, dispossession without rehabilitation and the denial of justice to the tribal peoples and government's apathy towards them. It also analyses the Rehabilitation and Resettlement Policy 2006 of the Orissa government which was enacted after the Kalinga Nagar massacre.



The State of India's Indigenous and Tribal Peoples 2007, March 2007

The State of India's Indigenous and Tribal Peoples 2007 also reports on the violations of civil and political rights in particular by the security forces and the armed opposition groups, atrocities by the non-tribals and an analysis of the non-implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act; violence against indigenous women; land rights and land alienation; status of indigenous Internally Displaced Persons; repression under forest laws and denial of access to minor forest produce; non-implementation of the affirmative action programmes; status of the Particularly Vulnerable Tribal Groups and the Denotified Tribes; and the state of the right to food, health and education of the indigenous/tribal peoples of India.



Indonesia: Piecemeal approaches to systemic and institutionalised discrimination, August 2007

This is a shadow report to the Initial to Third Periodic Reports (CERD/C/IDN/3 of 4 April 2006) of the government of Indonesia submitted under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The message of the periodic reports can be summarised in one sentence: since discrimination is prohibited under Law No. 39 of 1999 concerning human rights, there are no violations of the provisions of ICERD. Indonesia stands exposed with this shadow report.

